



Federal Communications Commission
Washington, D.C. 20554

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DA 19-219

SMALL ENTITY COMPLIANCE GUIDE

Electronic Delivery of MVPD Communications

FCC 18-166

MB Docket No. 17-317

Released November 16, 2018

This Guide is prepared in accordance with the requirements of section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct the Commission comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)

TTY: 1-888-TELL-FCC (1-888-835-5322)

Videophone: 1-844-4-FCC-ASL (1-844-432-2275)

Fax: 1-866-418-0232

I. BACKGROUND INFORMATION

Cable operators and other multichannel video programming distributors (MVPDs) are required to provide a wide variety of notices to subscribers in writing. The rules at issue in this guide are set forth in Subpart T of Part 76¹ and were largely adopted to implement Congress's directive, in the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act), that the Commission adopt customer service standards for cable operators.² In June 2017, the Commission issued a Declaratory Ruling (2017 Declaratory Ruling) that interpreted the written communications requirement of one section of Subpart T to be satisfied by electronic delivery of written material to subscribers.³ In the wake of this Declaratory Ruling, a number of commenters in the *Modernization of Media Regulatory Initiative* proceeding asked the Commission to consider permitting electronic delivery of the information required to be provided to cable subscribers in other Subpart T rules, as well as to consider other changes to the rules in Subpart T. In response to those proposals, the Commission adopted the Notice of Proposed Rulemaking in this proceeding in December 2017.⁴

This Guide concerns the subsequent *Report and Order* adopted in November of 2018.⁵ In that *Report and Order*, the Subpart T rules are extended to permit certain notices to be provided electronically via verified e-mail, so long as the cable operator complies with certain consumer safeguards.⁶ It also permits similar electronic delivery of privacy information that cable operators and other MVPDs are required to provide to subscribers. Finally, the Order authorizes cable operators to respond to consumer requests and complaints via e-mail if the consumer used e-mail to make the request or complaint or if the consumer specifies e-mail as the preferred delivery method in the request or complaint, and eliminates sections 76.1621 and 76.1622 of our rules.

II. KEY DEFINITION

Verified Email Address: An e-mail address that is: (1) one that the subscriber has provided to the cable operator (and not *vice versa*) for purposes of receiving communication, (2) one that the

¹ Specifically, 47 CFR §§ 76.1601, 76.1602, 76.1603, 76.1604, 76.1618, 76.1620, 76.1621, and 76.1622.

² Pub. L. No. 102-385, 106 Stat. 1460 (1992) (*1992 Cable Act*), codified in relevant part at 47 U.S.C. § 552.

³ See *National Cable & Telecommunications Association and American Cable Association, Petition for Declaratory Ruling*, Declaratory Ruling, 32 FCC Rcd 5269 (2017) (*2017 Declaratory Ruling*). The Declaratory Ruling granted a petition for declaratory ruling filed by NCTA – The Internet and Television Association (NCTA) and the American Cable Association (ACA). See *Petition for Declaratory Ruling of National Cable & Telecommunications Association and American Cable Association*, MB Docket No. 16-126 (filed Mar. 7, 2016) (requesting clarification that the written information that cable operators must provide to their subscribers pursuant to Section 76.1602(b) of the Commission's rules may be provided via electronic distribution).

⁴ *Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative*, MB Docket Nos. 17-317 and 17-105, Notice of Proposed Rulemaking, 32 FCC Rcd 10755 (2017).

⁵ *Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative*, MB Docket Nos. 17-317 and 17-105, Report and Order and Further Notice of Proposed Rulemaking, FCC 18-166, 2018 WL 6061286 (rel. Nov. 16, 2018) (*Report and Order*).

⁶ Any notice sent by verified e-mail may be provided to subscribers via a weblink contained in the text of the e-mail. In addition, information about rates and channel line-ups contained in paper-delivered annual notices may contain the full text or list a website address that contains such information.

subscriber regularly uses to communicate with the cable operator, and/or (3) one that has been confirmed by the subscriber as an appropriate vehicle for the delivery of notices.⁷

III. COMPLIANCE REQUIREMENTS

Electronic Distribution of Cable Notices to Subscribers

With respect to subscriber notices required by sections 76.1601, 76.1602, 76.1603, 76.1604, 76.1618, 76.1620 of the Commission's rules, cable operators may send them electronically via email if:

- The email address is verified, and
- Subscribers can opt for paper delivery at any time.

The email may include the notices in the body of the email itself or a weblink to the notice.

With respect to the rate and channel listing elements of the section 76.1602 annual notice,⁸ cable operators may provide a weblink to the subscriber, whether the notice is delivered by paper or in a verified e-mail. If they provide only a weblink in a paper annual notice, they must display prominently, on the front or first page of the printed annual notice, website links in a form that is short, simple, and easy to remember, such as "www.[homepage].com/Rates" or "www.[homepage].com/Channels," as well as a single phone number that is available to the subscriber to opt for a paper version of all information available via weblink. Any subscriber who opts for paper delivery of section 76.1602 annual notices after receiving the entire notice electronically must be provided with the entire notice on paper. An operator is not be permitted to merely send printed rate and channel weblinks to such a subscriber, who has already demonstrated a clear preference for printed annual notice information.

Privacy Notifications

With respect to written privacy notices that must be provided by cable operators, satellite providers, and Open Video System providers pursuant to 47 U.S.C. §§ 551(a)(1), 338(i), and 573(c)(1)(a), such notices may now be delivered via verified e-mail to the subscriber provided that the cable operator complies with the necessary safeguards required of the other Subpart T notices described above.

Responses to Consumer Requests or Complaints by E-mail

Cable operators may respond to consumer requests or billing dispute complaints under sections 76.1614 and 76.1619 by e-mail, if the consumer used e-mail to make the request or complaint or if the consumer specifies e-mail as the preferred response method.

Elimination of 47 CFR 76.1621, 47 CFR 76.1622

The *Report and Order* eliminated sections 76.1621 and 76.1622 of the Commission rules, finding that digital technology makes it unnecessary to promote the "special equipment" referred to in 76.1621, and that general changes in technology and increasing consumer awareness have rendered 76.1622's consumer education requirements unnecessary.

Section 76.1621 required cable system operators that use scrambling, encryption, or similar technologies in conjunction with cable system terminal devices that may affect subscribers' reception of signals to

⁷ *Report and Order* at para. 11.

⁸ 47 CFR §§ 76.1602(b)(2), (5), (7), and (8).

offer to supply each subscriber with special equipment that will enable the simultaneous reception of multiple signals.

Section 76.1622 required cable system operators to provide a consumer education program on compatibility matters to their subscribers in writing that includes certain information, such as notice that certain models of television receivers and videocassette recorders may not be able to receive all of the channels offered by the cable system when connected directly to the system, as well as an explanation of the types of channel compatibility problems that could occur if the device is connected directly to the system and suggestions to resolve such problems; notice that subscribers may not be able to use special features and functions of their television receivers and videocassette recorders where service is received through a cable system terminal device; and notice that remote control units compatible with cable system terminal devices and other customer premises equipment provided to subscribers may be obtained from other sources, such as retail outlets, as well as a representative list of remote control models that are compatible with deployed customer premises equipment.

IV. IMPLEMENTATION DATE

The rules in the *Report and Order* became effective January 25, 2019, except for new section 76.1600 and the amendments to sections 76.1614 and 76.1619, which are delayed pending Paperwork Reduction Act approval.

V. INTERNET LINKS

A copy of the *Report and Order and Further Notice of Proposed Rulemaking* is available at:

<https://docs.fcc.gov/public/attachments/FCC-18-166A1.pdf>

A copy of the Federal Register Summary of the *Report and Order* portion of this item is available at:

<https://www.govinfo.gov/content/pkg/FR-2018-12-26/pdf/2018-27601.pdf>